

**Introduced by Senator Corbett  
(Principal coauthor: Senator DeSaulnier)  
(Coauthor: Senator Price)**

February 19, 2010

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An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1231, as introduced, Corbett. Public contracts: state agency: sweatshop labor: slave and sweat free code of conduct.

Existing law requires every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, excluding public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garments, or accessories provided under the contract are produced by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. If a contractor knew or should have known the specified products furnished to the state were laundered or produced by the specified types of prohibited labor, the contractor may be removed from the bidder's list for 360 days. Existing law provides for misdemeanor liability in the case of a knowing false certification. Existing law requires the Department of Industrial Relations to establish a contractor responsibility program, on or before February 1, 2004, including a Sweatfree Code of Conduct. Existing law also requires the appropriate procurement agency, in consultation with the Director of Industrial Relations, to employ an approach to implement the Sweatfree Code of Conduct, as specified. Existing law requires the Department of Industrial Relations to explore mechanisms to ensure that businesses

that contract with state agencies are in compliance with this section, as prescribed.

This bill would require every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, including public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garment, or accessories provided under the contract are produced by abusive forms of labor performed by all persons, not only abusive forms of child labor. This bill would require the certification to include all raw materials in the supply chain used to produce or manufacture the goods procured. This bill would only apply to contracts for building materials in excess of \$20,000 in a public works contract, as prescribed. This bill would extend the period that the contractor is removed from the bidder's list to 2 years, if the contractor knew or should have known the specified products were laundered or produced by the specified prohibited labor. This bill would rename the Sweatfree Code of Conduct to be the Slave and Sweat Free Code of Conduct and would require the Department of Industrial Relations to establish a contractor responsibility program on or before January 1, 2012. This bill would delete the requirements that the appropriate agency, with the Director of Industrial Relations, employ an approach to implement the Slave and Sweat Free Code of Conduct, and that the Department of Industrial Relations explore mechanisms to ensure that businesses that contract with state agencies are in compliance with this section. This bill would additionally require contractors whose manufacturing and assembly locations are outside the United States to comply with international laws or treaties binding on their countries. By changing the definition of a crime, this bill would impose a state-mandated local program

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, ~~other than procurement related to a public works contract,~~ shall require that a contractor certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of ~~child~~ labor, or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of ~~child~~ labor, or exploitation of children in sweatshop labor. *For purposes of this subdivision, the certification shall include all raw materials in the supply chain used to produce or manufacture the goods procured.* The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(3) *If the contract is for the procurement of supplies or materials to be used in a public works project, this section shall apply only if the contract for building materials is in excess of twenty thousand dollars (\$20,000). A contractor shall not divide a contract into separate contracts to avoid the minimum financial threshold of this paragraph.*

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to

subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments, or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty that shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the apparel, garments, corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed ~~360 days~~ *two years*.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with paragraph (1) of subdivision (a), the agency shall refer the matter

1 for investigation to the head of the agency and, as the head of the  
2 agency determines appropriate, to either the Director of Industrial  
3 Relations or the Department of Justice.

4 (e) (1) For purposes of this section, “forced labor” shall have  
5 the same meaning as in Section 1307 of Title 19 of the United  
6 States Code.

7 (2) “Abusive forms of ~~child~~ labor” means any of the following:

8 (A) All forms of slavery or practices similar to slavery, such as  
9 the sale and trafficking of ~~children~~ *persons*, debt bondage, and  
10 serfdom and forced or compulsory labor, including forced or  
11 compulsory recruitment of ~~children~~ *persons* for use in armed  
12 conflict.

13 (B) The use, procuring, or offering of a child for prostitution,  
14 for the production of pornography, or for pornographic  
15 performances.

16 (C) The use, procuring, or offering of a ~~child~~ *person* for illicit  
17 activities, in particular for the production and trafficking of illicit  
18 drugs.

19 (D) All work or service exacted from or performed by any  
20 person under the age of 18 years either under the menace of any  
21 penalty for its nonperformance and for which the worker does not  
22 offer oneself voluntarily, or under a contract, the enforcement of  
23 which can be accomplished by process or penalties.

24 (E) All work or service exacted from or performed by a child  
25 in violation of all applicable laws of the country of manufacture  
26 governing the minimum age of employment, compulsory education,  
27 and occupational health and safety.

28 (3) “Exploitation of children in sweatshop labor” means all  
29 work or service exacted from or performed by any person under  
30 the age of 18 years in violation of more than one law of the country  
31 of manufacture governing wage and benefits, occupational health  
32 and safety, nondiscrimination, and freedom of association.

33 (4) “Sweatshop labor” means all work or service exacted from  
34 or performed by any person in violation of more than one law of  
35 the country of manufacture governing wages, employee benefits,  
36 occupational health, occupational safety, nondiscrimination, or  
37 freedom of association.

38 (5) “Apparel, garments, or corresponding accessories” includes,  
39 but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, “forced labor” and “convict labor” do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) “State agency” means any state agency in this state.

(f) (1) On or before ~~February~~ *January* 1, ~~2004~~ 2012, the Department of Industrial Relations shall establish a contractor responsibility program, including a ~~Sweatfree Slave and Sweat Free~~ Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the ~~Sweatfree Slave and Sweat Free~~ Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The ~~Sweatfree Slave and Sweat Free~~ Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) ~~Upon implementation in the manner described in paragraph (4) every, Every~~ contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the ~~Sweatfree Slave and Sweat Free~~ Code of Conduct that no apparel, garments, or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

~~(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments, and corresponding accessories may be permitted a phase in period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phase in goals and timetables of up to three years to achieve compliance with the principles of the Sweatfree Code of Conduct.~~

~~(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore~~

1 mechanisms employed by other governmental entities, including,  
2 but not limited to, New Jersey Executive Order 20, of 2002, to  
3 ensure that businesses that contract with this state are in compliance  
4 with this section and any regulations or requirements promulgated  
5 in conformance with this section, as amended by Section 2 of  
6 Chapter 711 of the Statutes of 2003. The mechanisms explored  
7 may include, but not be limited to, authorization to contract with  
8 a competent nonprofit organization that is neither funded nor  
9 controlled, in whole or in part, by a corporation that is engaged in  
10 the procurement or laundering of apparel, garments, or  
11 corresponding accessories, or the procurement of equipment,  
12 materials, or supplies. The Department of Industrial Relations, in  
13 complying with this paragraph, shall also consider any feasible  
14 and cost-effective monitoring measures that will encourage  
15 compliance with the Sweatfree Code of Conduct.

16 (5)

17 (3) To ensure public access and confidence, the Department of  
18 Industrial Relations shall ensure public awareness and access to  
19 proposed contracts by postings on the Internet and through  
20 communication to advocates for garment workers, unions, and  
21 other interested parties. The appropriate agencies shall establish  
22 a mechanism for soliciting and reviewing any information  
23 indicating violations of the *Sweatfree Slave and Sweat Free* Code  
24 of Conduct by prospective or current bidders, contractors, or  
25 subcontractors. The agencies shall make their findings public when  
26 they reject allegations against bidding or contracting parties.

27 (6)

28 (4) Contractors shall ensure that their subcontractors comply in  
29 writing with the *Sweatfree Slave and Sweat Free* Code of Conduct,  
30 under penalty of perjury. Contractors shall attach a copy of the  
31 *Sweatfree Slave and Sweat Free* Code of Conduct to the  
32 certification required by subdivision (a).

33 (g) No state agency may enter into a contract with any contractor  
34 unless the contractor meets the following requirements:

35 (1) Contractors and subcontractors in California shall comply  
36 with all appropriate state laws concerning wages, workplace safety,  
37 rights to association and assembly, and nondiscrimination standards  
38 as well as appropriate federal laws. Contractors based in other  
39 states in the United States shall comply with all appropriate laws  
40 of their states and appropriate federal laws. For contractors whose

1 locations for manufacture or assembly are outside the United States,  
2 those contractors shall ensure that their subcontractors comply  
3 with the appropriate laws of countries where the facilities are  
4 located *or international laws or treaties binding upon those*  
5 *countries.*

6 (2) Contractors and subcontractors shall maintain a policy of  
7 not terminating any employee except for just cause, and employees  
8 shall have access to a mediator or to a mediation process to resolve  
9 certain workplace disputes that are not regulated by the National  
10 Labor Relations Board.

11 (3) Contractors and subcontractors shall ensure that workers  
12 are paid, at a minimum, wages and benefits in compliance with  
13 applicable local, state, and national laws of the jurisdiction in which  
14 the labor, on behalf of the contractor or subcontractor, is performed.  
15 Whenever a state agency expends funds for the procurement or  
16 laundering of apparel, garments, or corresponding accessories, or  
17 the procurement of equipment, materials, or supplies, other than  
18 procurement related to a public works contract, the applicable  
19 labor standards established by the local jurisdiction through the  
20 exercise of either local police powers or local spending powers in  
21 which the labor, in compliance with the contract or purchase order  
22 for which the expenditure is made, is performed shall apply with  
23 regard to the contract or purchase order for which the expenditure  
24 is made, unless the applicable local standards are in conflict with,  
25 or are explicitly preempted by, state law. A state agency may not  
26 require, as a condition for the receipt of state funds or assistance,  
27 that a local jurisdiction refrain from applying the labor standards  
28 that are otherwise applicable to that local jurisdiction. The  
29 Department of Industrial Relations may, without incurring  
30 additional expenses, access information from any nonprofit  
31 organization, including, but not limited to, the World Bank, that  
32 gathers and disseminates data with respect to wages paid  
33 throughout the world, to allow the Department of Industrial  
34 Relations to determine whether contractors and subcontractors are  
35 compensating their employees at a level that enables those  
36 employees to live above the applicable poverty level.

37 (4) All contractors and subcontractors shall comply with the  
38 overtime laws and regulations of the country in which their  
39 employees are working.



1 (5) All overtime hours shall be worked voluntarily. Workers  
2 shall be compensated for overtime at either (A) the rate of  
3 compensation for regular hours of work, or (B) as legally required  
4 in the country of manufacture, whichever is greater.

5 (6) No person may be employed who is younger than the legal  
6 age for children to work in the country in which the facility is  
7 located. In no case may children under the age of 15 years be  
8 employed in the manufacturing process. Where the age for  
9 completing compulsory education is higher than the standard for  
10 the minimum age of employment, the age for completing education  
11 shall apply to this section.

12 (7) There may be no form of forced labor of any kind, including  
13 slave labor, prison labor, indentured labor, or bonded labor,  
14 including forced overtime hours.

15 (8) The work environment shall be safe and healthy and, at a  
16 minimum, be in compliance with relevant local, state, and national  
17 laws. If residential facilities are provided to workers, those facilities  
18 shall be safe and healthy as well.

19 (9) There may be no discrimination in hiring, salary, benefits,  
20 performance evaluation, discipline, promotion, retirement, or  
21 dismissal on the basis of age, sex, pregnancy, maternity leave  
22 status, marital status, race, nationality, country of origin, ethnic  
23 origin, disability, sexual orientation, gender identity, religion, or  
24 political opinion.

25 (10) No worker may be subjected to any physical, sexual,  
26 psychological, or verbal harassment or abuse, including corporal  
27 punishment, under any circumstances, including, but not limited  
28 to, retaliation for exercising his or her right to free speech and  
29 assembly.

30 (11) No worker may be forced to use contraceptives or take  
31 pregnancy tests. No worker may be exposed to chemicals, including  
32 glues and solvents, that endanger reproductive health.

33 (12) Contractors and bidders shall list the names and addresses  
34 of each subcontractor to be utilized in the performance of the  
35 contract, and list each manufacturing or other facility or operation  
36 of the contractor or subcontractor for performance of the contract.  
37 The list, which shall be maintained and updated to show any  
38 changes in subcontractors during the term of the contract, shall  
39 provide company names, owners or officers, addresses, telephone

1 numbers, e-mail addresses, and the nature of the business  
2 association.

3 (h) Any person who certifies as true any material matter pursuant  
4 to this section that he or she knows to be false is guilty of a  
5 misdemeanor.

6 (i) The provisions of this section, as amended by Section 2 of  
7 Chapter 711 of the Statutes of 2003, shall be in addition to any  
8 other provisions that authorize the prosecution and enforcement  
9 of local labor laws and may not be interpreted to prohibit a local  
10 prosecutor from bringing a criminal or civil action against an  
11 individual or business that violates the provisions of this section.

12 (j) (1) The certification requirements set forth in subdivisions  
13 (a) and (f) do not apply to a credit card purchase of goods of two  
14 thousand five hundred dollars (\$2,500) or less.

15 (2) The total amount of exemption authorized herein shall not  
16 exceed seven thousand five hundred dollars (\$7,500) per year for  
17 each company from which a state agency is purchasing goods by  
18 credit card. It shall be the responsibility of each state agency to  
19 monitor the use of this exemption and adhere to these restrictions  
20 on these purchases.

21 SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.